

### **REMARKS/ARGUMENTS**

Claims 57-63 and 65-69 are pending in the present application. Claims 57-63 and 65-69 are rejected. Applicant respectfully requests reconsideration of these claims in view of the arguments presented herein.

Rejections under 35 U.S.C. § 103(a)

Claims 57-63 and 65-69 are rejected under 35 U.S.C. § 103(a) as unpatentable over Erickson (US Patent No. 3,751,569) and Miettinen (US Patent No. 5,502,045) and Wester *et al.* (WO 99/56558). These references, taken together or separately do not teach or suggest the claimed invention. None of the references teach or suggest that an edible oil that containing more than 10% and up to 30% of a sterol fatty acid ester composition, wherein the sterol fatty acid ester composition comprises more than 50% monounsaturated fatty acid (MUFA) moieties, may remains clear upon addition of the sterol fatty acid ester composition; and wherein the edible oil that contains the sterol fatty acid ester composition is free of solids at temperatures of greater than about 60°F. Erickson discloses the addition of 0.5% to 10% of a plant sterol carboxylic acid ester to an edible oil base, with a preferred limit of 3%. (Erickson, Abstract and column 2, lines 56-57.) As Erickson explains, at levels above the upper 10% limit, and in fact, at levels less than 10%, many plant sterol esters are not sufficiently soluble in the oil base. (Erickson, column 2, lines 35-48). Miettinen also discloses the addition of plant sterol esters and/or plant stanol esters to an oil base, at levels up to 20%, for end uses, including oils, mayonnaises, and margarines. However, nowhere in Miettinen is it taught that plant stanol esters can be added to an oil base at a level above 10% while maintaining the clarity of the oil. In fact, Miettinen only teaches the addition of more than 10% of the plant stanol esters to the oil base when that oil base would be used for in an application where solids, *i.e.*, haziness would not have an impact, in mayonnaises (example 2, columns 5-6) and in margarine (example 5, column 6), wherein the stanol esters were added at levels of 3, 6, and 13%. Noticeably missing in the examples where the plant stanol esters were added only to oil, was the addition of those compounds at the 13% level. Examples 3 and 4 show the addition of the plant stanol esters to oil at levels of 3% and 6% only. Finally, Wester, after reviewing both the teachings of Erickson (see Wester, pages 2-3, carryover paragraph) and Miettinen (page 3, first full paragraph), notes

that the problem with those inventions is that there is an inadequate level of plant sterols and/or stanols. (Wester, page 4, first full paragraph.) Wester concludes then, that the best way to introduce a higher level of plant sterols and/or stanols to an oil base is by increasing the level of PUFAs in the oils used for esterification. (Wester, page 5, fourth paragraph). Wester, in fact, teaches increasing the PUFA content above that found in natural high PUFA oils. (Wester, page 5, fourth paragraph, last sentence.) This teaching is directly contrary to Applicants claimed invention. Applicants call for the use of MUFAs, not PUFAs.

Taking these references together, there is no reasonable expectation of successfully preparing an edible oil comprising more than 10% and up to 30% of a sterol fatty acid ester composition, wherein the sterol fatty acid ester composition comprises more than 50% monounsaturated fatty acid (MUFA) moieties; wherein the edible oil that contains the sterol fatty acid ester composition remains clear upon addition of the sterol fatty acid ester composition; and wherein the edible oil that contains the sterol fatty acid ester composition is free of solids at temperatures of greater than about 60°F. First, neither Erickson nor Miettinen is able to make a clear oil containing more than 10% sterol esters. Second, Wester teaches that the way to make a clear oil containing more than 10% sterol esters is by using high PUFA oils for the esterification, and not just high PUFA oils, but PUFA enriched high PUFA oils. The combination of these references does not teach or suggest Applicants claimed invention. Furthermore, the teachings of Erickson, Miettinen, and Wester do not provide a reasonable expectation of success in preparing an edible oil comprising more than 10% and up to 30% of a sterol fatty acid ester composition, wherein the sterol fatty acid ester composition comprises more than 50% monounsaturated fatty acid (MUFA) moieties; wherein the edible oil that contains the sterol fatty acid ester composition remains clear upon addition of the sterol fatty acid ester composition; and wherein the edible oil that contains the sterol fatty acid ester composition is free of solids at temperatures of greater than about 60°F.

Applicants respectfully submit that, for the reasons stated above, claims 57-63 and 65-69 are patentable over the prior art of record. A notice to that effect is respectfully requested.

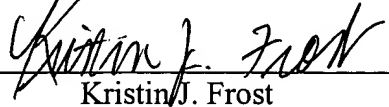
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- Request for Continued Examination

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